

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

CALIFORNIA COMMUNITY NEWS

Employer

and

Case No. 31-RC-7913

SOUTHERN CALIFORNIA TYPOGRAPHICAL
AND MAILER UNION, affiliated as
COMMUNICATIONS WORKERS OF AMERICA
LOCAL 14904^{1/}

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{2/}
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{3/}
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{4/}

INCLUDED: All full-time and regular part-time production and maintenance employees, including press operator/leads, press operators, pressroom coordinators, SLS operators, shipping and receiving employees, drivers, and janitors employed by the Employer at its 3550 Tyburn Street and 3424 North San Fernando Road, Los Angeles, California facilities.

EXCLUDED: Packaging and distribution manager, pressroom supervisors, plateroom leadpersons, packaging supervisors, packaging leadpersons, shipping supervisors, shipping leadpersons, receiving supervisors, receiving leadpersons, office clerical employees, all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before

the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by SOUTHERN CALIFORNIA TYPOGRAPHICAL AND MAILER UNION, affiliated as COMMUNICATIONS WORKERS OF AMERICA LOCAL 14904.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 31 within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before **November 13, 2000**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW⁵/

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 20, 2000.

DATED at Los Angeles, California this 6th day of November, 2000.

/s/ James J. McDermott
James McDermott, Regional Director
National Labor Relations Board
Region 31
11150 W. Olympic Blvd., Suite 700
Los Angeles, CA 90064-1824

FOOTNOTES

- 1/ The name of the Union appears as corrected at the Hearing.
- 2/ The Petitioner excepted during the hearing to the Hearing Officer's ruling excluding from the record certain documents proffered by the Petitioner, and subsequently reiterated its exception in its September 22, 2000 letter to the undersigned Regional Director. The excluded documents appear to be collective-bargaining agreements to which Petitioner is a party. Petitioner's Rejected Exhibits 1-6. The Petitioner alleges that the excluded collective-bargaining agreements are evidence that Petitioner, in agreements to which the Employer herein is not a party, has in the past negotiated the bargaining unit inclusion of employees categorized as 'working foremen' or 'supervisors.' If Petitioner intended to imply that parties are free to define their own lawful bargaining units by voluntary agreement, it is correct: statutory supervisors may thus be included in a bargaining unit by mutual agreement. McClatchy Newspapers, 307 NLRB 773, 778 (1992). Even assuming, however, that the proffered contracts reference bargaining units comparable to the bargaining unit in issue herein, and further assuming that the 'working foremen' therein included are in fact statutory supervisors -- two assumptions not supported by record evidence -- such documents would not be relevant to the issues herein. I therefore adopt the Hearing Officer's evidentiary ruling in issue.

The Petitioner further sought to except, by its September 22, 2000 letter, to the Hearing Officer's ruling during the Hearing granting the Employer's petition to revoke the Petitioner's subpoena duces tecum. Petitioner had sought, through the revoked subpoena, to obtain collective-bargaining agreements to which the Employer may be a party in bargaining units not at issue herein. As such agreements could not reasonably be relevant to the issues herein, I adopt the Hearing Officer's ruling in issue.

- 3/ The Employer, California Community News, is engaged in the business of newspaper printing and inserting of pre-printed newspaper advertising. During the past

12 months, which period is representative of its operation, the Employer derived in excess of \$200,000 from this business. Therefore, the Employer satisfies the Board's statutory jurisdictional requirement, as well as the Board's discretionary standard for asserting jurisdiction over non-retail enterprises. Belleville Employing Printers, 122 NLRB 350 (1958).

4/ The parties differ with respect to the supervisory status of 12 job categories discussed serially below, as well as with respect to the unit inclusion of the "press room coordinator" category which the Employer holds to be office clerical. In the first 12 cases, the Employer contends that the employee category should be excluded under Section 2(11) while the Petitioner disagrees. The parties' proposed unit descriptions as amended at the hearing reflect these differences in position. As to janitors and drivers, the record is clear that the Employer did not object to the Petitioner's request for their inclusion.

Though at the outset of the hearing the Employer intimated that a single unit embracing both the production facility and the distribution facility in issue (see below) might be inappropriate, and at the conclusion of the hearing it declined to take a position on the unit description, it did agree on brief that such a single unit is appropriate.

The issues will be addressed following an overview of the Employer's operations and a summary of the state of applicable law.

THE EMPLOYER'S OPERATIONS

The Employer prints newspapers, inserts advertising supplements, and distributes newspapers and advertising supplements. Its production and distribution activities are based in a three-building facility in the Glendale section of Los Angeles, California. One building, a 43,000 square foot facility at 3424 San Fernando Road (the 3424 facility) houses two commercial printing presses, related equipment, a plate-making area, and

offices. Connected by a tunnel is another building, at 3550 Tyburn Street (the 3550 facility) that houses the Employer's packaging (sometimes referred to as "packing" in the record) and distributing (P&D) operation. A third building includes warehouse and overflow space for the busy fall season. The Employer's chief executive, President David Skilliter (Skilliter), has been in charge for about a year and a half; he apparently embarked on a management reorganization that was completed in P&D but had not yet reached the pressroom operation at the time of hearing

All material trucked into or out of either facility is handled through the 3550 facility. The pressroom operation and the P&D operation interact with respect to only one of the products printed in the pressroom: the pressroom prints advertising inserts for the Office Depot office supply chain, and the P&D side ships them out in bulk or inserts them into newspaper sections as appropriate. Otherwise, the materials inserted into newspaper sections or shipped in bulk by P&D are printed by other firms and delivered to P&D by truck. The rest of the pressroom's work product consists of newspapers or newspaper sections that are not transferred to P&D. With respect to personnel, there is no exchange of supervisors, leadpersons, or skilled operators between the pressroom and P&D; unskilled employees are sometimes "lent" by P&D leadpersons to replace unexpectedly absent pressroom employees at the request of the pressroom supervisors or leadpersons.

The pressroom manager directs all pressroom operations. In the pressroom, the two offset presses are normally scheduled to run seven days a week, two or three shifts a day; both presses usually run simultaneously. The press crews are therefore scheduled to work staggered five-day workweeks on two or three different shifts. During most but not all shifts there is a pressroom supervisor or a pressroom leadperson on duty. Though the testimony of pressroom employees was not uniform in the use of job titles, it appears that the press crew job titles, in order of ascending skill and wages, are: stacker, reel tender, press person, journey press person, and operator. Since perhaps three years ago, it has been the Employer's policy to promote press crew employees to higher crew jobs when

appropriate. A press crew always includes a press operator; another press operator, in the role of backup operator, is usually present as well so that the press may keep running even if the regular operator becomes unavailable. Three of the press operators are designated as press operator/leads. Each press crew commonly employs about 8 employees.

The “stacker” takes the finished product coming out of the press and stacks it down on pallets for subsequent removal. The “reel tender” feeds the press’s paper supply, the “web,” into the press. The “press person” is responsible for composition (proper page alignment) and setting black ink. The “journeyperson” must, in addition, set the colors, including checking registration with a magnifying glass and matching the provided proofs. The “press operator,” in addition to overseeing the work of the other crew members, runs the folder, which folds the printed paper into appropriate newspaper shapes. Each press may run (print) a number of different products per shift, sometimes simultaneously; the press crew readies each press for its transition between runs by doing a “make-ready,” including a cleanup of ink color and positioning the new plates based on the “layout” document prepared for the next run.

The three pressroom supervisors work staggered shifts; nevertheless, some press crew work hours take place at times when no pressroom supervisor is present. Pressroom supervisors wear light blue uniform shirts or their own shirts; operators once wore the same light blue uniform shirts but subsequently requested dark blue shirts due to their occupational ink stain problem. The printing presses use plates supplied by the adjacent plate room, headed by two plateroom leadpersons.

The Employer considers all managers, supervisors, leadpersons and operators to be responsible for enforcement of Employer safety policies. Thus, P&D supervisors and leadpersons are expected to enforce the use of safety glasses as required, and the pressroom supervisors, operator/leads and operators are expected to enforce the use of hearing protection as required. The Employer also considers P&D crew coordinators to

be responsible for enforcement of Employer safety policies, but does not contend crew coordinators to be Section 2(11) supervisors.

The P&D operation is normally directed by the P&D manager, but that position had been vacant for perhaps a year at the time of the Hearing. In the absence of a P&D manager, the P&D supervisors report directly to Employer president Skilliter. This operation, which functions in the 3550 facility and overflows into the third building during the fall season, includes the packaging department, the shipping department, and the receiving department. Each department is directed by a P&D supervisor who is assisted by two or more leadpersons. Because they work staggered shifts, each of the P&D supervisors is usually the only supervisor present in the P&D department during his shift, and acts as a “shift supervisor” for the entire P&D operation.

The packaging department is itself divided into an “SLS” side and a “bulk/handline” side. The former includes three large insertion machines called SLS machines which run two shifts on most days and require crews of between 8 and 12 employees. The SLS machines insert advertising supplements into newspaper sections; the bulk/handline operation bundles such supplements for delivery in bulk to circulation agents in the field; the handline operation also inserts supplements by hand. At any given time, about 80 employees work on SLS and about a dozen in the bulk operation. The main pieces of equipment in the bulk operation are a shrink-wrap machine, a scale where bundles are weighed and tied, and a tying machine. The packaging department is directed by a packaging supervisor assisted by two packaging leadpersons; they are often referred to in the record as the SLS supervisor and the SLS leadpersons.

The shipping department, based in the 3550 facility where the truck docks are located, normally operates around the clock to ship product to customers under daily deadlines. It includes loaders and various categories of drivers, directed by a shipping supervisor assisted by four shipping leadpersons.

The receiving department handles the acceptance and unloading of the advertising inserts or newspaper supplements intended for insertion by the P&D operation. It also

functions in the 3550 facility, except for storing certain merchandise coupons securely (“caging”) in the 3424 facility. Receiving uses the third, or overflow, building during the fall season. It includes receivers, receiving clerks, one receiving supervisor and two receiving leadpersons.

The Employer grants periodic wage adjustments to all employees, but all employees do not receive the same adjustment. Many but not all of the job categories alleged to be Section 2(11) supervisors are on salary: in the pressroom, however, the plateroom leads, the operator/leads and the operators are paid an hourly wage; on the P&D side, the SLS operators are also paid an hourly wage. All supervisors and leadpersons of the Employer are on call when not at the facility; thus, they all carry pagers.

LEGAL BACKGROUND

Section 2(11) of the Act defines a statutory supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The criteria listed in Section 2(11) are to be read in the disjunctive so that the exercise of any one of the indicia listed in Section 2(11) may warrant a finding of supervisory status. Times Herald Printing Co., 252 NLRB 278 (1980); Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Section 2(11) also, however contains the “conjunctive requirement that the power be exercised with ‘independent judgment,’ rather than in a ‘routine’ or ‘clerical’ fashion.” Chevron U.S.A., 309 NLRB

59, 61 (1992). Acts within the scope of employment or on the authorized business of the Employer are in the interests of the Employer. NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 578 (1994), citing Packard Motor Car Co. v. NLRB, 330 U.S. 485, 488-489 (1947).

The Board is careful not to construe supervisory status too broadly because employees deemed to be supervisors are denied the rights granted to employees in the National Labor Relations Act. Washington Nursing Home, 321 NLRB 366, 377-378 (1996). Therefore, the Board holds that the party attempting to exclude individuals from a bargaining unit by alleging that they are statutory supervisors has the burden of establishing that they are supervisors within the meaning of Section 2(11) of the Act. S.S. Joachim & Anne Residence, 314 NLRB 1191 (1994); Ohio Masonic Home, 295 NLRB 390, 393 (1989); Golden Fan Inn, 281 NLRB 226, 230 at fn.24 (1986); Tucson Gas & Electric Co., 241 NLRB 181 (1979). In this regard, the Board has held that “whenever the evidence is in conflict or inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least not on the basis of those indicia.” Phelps Community Medical Center, 295 NLRB 486, 490 (1989). Furthermore, conclusory statements without supporting evidence are not sufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193-194, 197 (1991).

Significantly, the legislative history discloses an intention to distinguish between straw bosses, leadmen, setup men, and other minor supervisory employees on the one hand, and the supervisor vested with genuine management prerogatives on the other. Times Herald Printing Co., 252 NLRB 278, 284 (1980).

ANALYSIS

The Pressroom Operation

The Employer’s printing press or “pressroom” operation is headed by Pressroom Manager Hank Knight (Knight). It includes a platemaking department headed by two

Platemaking Leadpersons and a pressroom headed by three Pressroom Supervisors, three Pressroom Operator/Leads, and seven Pressroom Operators. The parties stipulated to Manager Knight's statutory supervisory status. The status of the pressroom supervisors, operator/leads, operators, and platemaking leadpersons remains in issue.

The Pressroom Supervisors

Employer President David Skilliter (Skilliter) does not supervise production employees. Manager Knight spends little if any time overseeing production employees in the pressroom or platemaking; his time is spent on budgetary considerations and planning for future business growth. President Skilliter testified that his pressroom supervisors have authority to direct all pressroom work, to assign and reassign any task that, in a supervisor's judgment, needs to be done by a pressroom employee: "that is their pressroom while they are there." Of the three pressroom supervisors, only Gregory gave testimony; however, there was uncontroverted testimony that pressroom supervisors Francis and Rios-Ochoa have substantially the same duties and exercise the same authority as does Gregory.

Generally, only one pressroom supervisor is present per shift, and he is then the highest-ranking employee of the Employer performing direct oversight over production employees in the 3424 facility. In the course of a normal week, however, a pressroom supervisor oversees a larger number of individuals because the shifts of the press crews are not coterminous with the shifts of the supervisors: Supervisor Gregory, for example, supervises 4 different crews, or about 32 employees, in the course of his normal workweek. Pressroom supervisors directly oversee two press crews simultaneously, usually totaling 14 to 16 employees. Pressroom supervisors see that production deadlines and quality goals are met: they minimize press down time, they examine layouts (printing plans) to minimize changeover times and make-ready times. Based on daily telephonic information from the client newspapers regarding the next edition's size and color content, the supervisors "set up" the respective press runs and show them to the

operators, thus determining each crew's work for that day and/or the next day. Pressroom supervisors may, without consulting the manager, increase the size of a press crew if they judge a particular press run to require it. Supervisors are responsible for the quality of the paper (newsprint) used by the crews and for meeting the crews' "waste" goals. Supervisor Gregory testified that he may, at the beginning of his shift, assign individual press crew employees to specific tasks, though as the shift continues such assignments will be made by the operators. Supervisors make sure the operators are training their crews properly, including on safety issues. The supervisors direct the pressroom operators accordingly, sometimes relaying instructions from Manager Knight who usually does not speak to operators directly. Pressroom supervisors engage in production work on the presses only when the unexpected absence of an operator and a backup operator require it: perhaps once a month.

The supervisors, on recommendation of pressroom operators, may and do, in the manager's absence, authorize overtime work for an entire press crew, thus causing the Employer to incur the respective overtime pay costs. In addition, pressroom supervisors may, and do, decide to call in a member of an off-duty crew to cover for an absent member of an on-duty crew; in such a case, the pressroom supervisor present makes the telephone call to the employee being called in. Press crews sometimes finish their press runs before the end of their shifts; at such times the pressroom supervisor present has the authority either to assign other tasks or to allow the crew to go home early without loss of pay, an event known as a "bust out."

Based on the above facts, I find that the pressroom supervisors are statutory supervisors under Section 2(11): they possess the authority to assign work to bargaining unit members on their two presses and responsibly direct that work. Pressroom supervisors must exercise independent judgment in setting up the presses for runs, deciding the appropriate crew sizes, meeting quality and efficiency goals, deciding on the need for and extent of overtime, and authorizing "bust-outs." McClatchy Newspapers, 307 NLRB 773, 777-779 (1992).

Pressroom supervisors interview applicants for pressroom jobs and narrow the choices to two or three applicants who are then interviewed jointly by Manager Knight and an available supervisor. Subsequently, Knight discusses the applicants with the supervisors and generally accepts their recommendation. The supervisors and Knight engage in a similar process regarding promotion of existing employees to more demanding and highly-paid jobs within a press crew; again, Knight generally accepts their recommendation. Supervisor Gregory, for example, could not remember a single instance when his recommendation to promote a press crew employee had been rejected by Knight.

When a pressroom operator job becomes vacant, a supervisor will give the most senior press journeyman an opportunity to perform as press operator provisionally. The deference to seniority is a custom, but not a rule or directive, of the Employer, and is related to the assumption that superior experience on the press is often associated with superior knowledge or skill. Sometimes the most senior journeyman has not been interested in the operator vacancy, so another journeyman has been picked to try out. Generally those journeymen have performed well as provisional operators, and the supervisor's consequent promotion recommendations of them were successful.

Based on the evidence of Supervisor Gregory's independent selection of operator-candidates from among existing press crew members and his subsequent successful promotion recommendations of them, I find that pressroom supervisors have the authority effectively to recommend promotions of press crew members and exercise it with independent judgment, thus supporting my finding of Section 2(11) supervisor status. McClatchy Newspapers, 307 NLRB at 777, 779; ITT Lighting Fixtures, 265 NLRB 1480 (1982).

The pressroom supervisors have additional duties: they schedule employees and ascertain the accuracy of the Employer's payroll time reports, comparing them to their own records and consulting the pressroom operators if necessary. The supervisors recommend disciplinary action to Manager Knight when they detect appropriate

attendance problems, but Knight likes to speak with the employees concerned before deciding on discipline. The supervisors also approve the pressroom employees' vacation requests on a first-come, first-served basis when such requests appear to the supervisors to be consistent with the pressroom's staffing requirements. The supervisors also approve or deny pressroom employees' other (non-vacation) time-off requests.

When away from the facility, supervisors are in on-call status. At such times, pressroom operators call their supervisors for help in case of unplanned crew employee absences, or of a disgruntled employee, or a press breakdown due to mechanical problems. In such cases, the absent supervisor usually addresses the problem by, respectively, calling another supervisor to "borrow" an employee from another department, or by talking to the troublesome employee on the telephone (and, if necessary, ordering the employee to go home), or by arranging for a mechanic to attend to the press. Authority to send an employee home, however, is not in itself evidence of supervisory status. NLRB v. Gray Line Tours, Inc., 461 F.2d 763 (9th Cir. 1972) (per curiam).

The pressroom supervisors very rarely perform operator's work. The pressroom supervisors are salaried, while all other pressroom operation production employees are on hourly wages. The pressroom supervisors have an office, while their operators and operator/leads do not have an office or a desk. The pressroom supervisors attend pressroom supervisory meetings with Manager Knight, at which issues of waste, overtime and budget are discussed; no one else normally attends those meetings, though sometimes operators are called in because the meeting's subject matter is deemed relevant to their duties. The secondary criteria evidence (mode of payment, access to supervisory meetings and an office) set the pressroom supervisors further apart from all other pressroom employees. While these secondary criteria do not establish supervisory status by themselves, they lend support to the conclusion that the totality of circumstances requires a finding of supervisory status. McClatchy Newspapers, 307 NLRB at 779; Times Herald Printing Co., 252 NLRB 278 (1980).

Approximately once every two years, the pressroom supervisors also evaluate the press crew employees' performance; those evaluations go to Manager Knight and then to Human Resources, and may affect employee pay through a three-step process by which management determines whether any of the pressroom employees' wage adjustments will differ from the periodic, blanket percentage increase to be given to all the employees of the Employer. First, the three supervisors, together with the Employer's Human Relations Manager or his assistant, review the personnel file of each pressroom employee to note attendance issues and disciplinary warnings. Then the three supervisors review that information with their operators and subsequently meet with Manager Knight. In the second step, that information is presented to the Human Relations Manager, who evaluates it in light of the performance of the Employer's employees in other departments, in order to ensure consistent decisional standards across the company. In the third step, the three supervisors consult the pressroom operators regarding the work performance of their respective employees; subsequently, the three supervisors and Manager Knight, acting through the Human Relations Manager, forward their recommendations to Employer President Skilliter. Skilliter testified that said recommendations "weigh very heavy" in his final wage adjustment decisions regarding the pressroom employees, that he does not conduct an independent investigation of the employees' work performance, but that he does personally look at attendance records on a monthly basis. Further, with respect to the wage adjustment decisions regarding the maintenance employees who are formally supervised by Manager Knight, Knight relies on the three supervisors for input on the maintenance employees' performance during the supervisors' respective shifts.

The reportorial aspect of the pressroom supervisors' above-described role in the wage adjustment process (their input to Knight regarding janitors; their reports to Knight regarding personnel file contents and operators' evaluations) is not evidence of authority to promote, reward, or effectively recommend such. Arizona Public Service Co., 310 NLRB 477 (1993); Passavant Health Center, 284 NLRB 887 (1987). Nor has the

Employer shown that the pressroom supervisors' recommendations in the wage adjustment process were actually implemented without independent investigation by superiors. ITT Lighting Fixtures, 265 NLRB 1480 (1982), reversed on other grounds, 283 NLRB 453 (1987). Thus, I do not rely on the pressroom supervisors' role in the wage adjustment process in my finding of their supervisory status.

The Pressroom Operator/leads

Employees Gabriel Guzman, Rosendo Gonzalez, and Frank Zamora (Zamora) were classified as pressroom operator/leads at the time of hearing. According to Manager Knight, an operator/lead is an operator who is paid extra money to "basically fill in for" the supervisor when no supervisor is in the pressroom. Because there are two presses, there are generally two operators and their crews present; according to Knight, the designation of one of those operators as a lead facilitates decisionmaking when, for example, a crew finds itself shorthanded. Operators report to the supervisors; in the supervisors' absence, they report to the operator/leads. Normally, supervisors are not present during 6 of the 21 weekly press crew shifts. In addition, a leadperson may make some decisions even when a supervisor is present: e.g., if the supervisor is in his office when a press crew employee calls in sick, the leadperson may make appropriate changes in how the presses are staffed and later inform the supervisor. There is no evidence, however, that this authority to change an employee's work station in response to a recurring, routine circumstance requires a leadperson's independent judgment. S.D.I. Operating Partners, L.P., 321 NLRB 111 (1996).

Pressroom Supervisor Gregory, contrary to Knight, testified that he did not differentiate between press operator/leads and press operators, a distinction commonly made in the P&D operation but not, said Gregory, in the pressroom. Gregory, after being asked by the Employer counsel whether he had an operator/lead on his shift, spontaneously named the three operators who in his experience provide leadership, during Gregory's absence, on the crews with which he is familiar: only one of the three is

an operator/lead. Gregory also spontaneously named an operator who in his experience provides the leadership on the second-shift weekend crew (a shift during which no supervisor is present): again, the named operator is not an operator/lead.

The operator/leads, unlike their supervisors, do not write disciplinary warnings. They do not issue discipline, but may recommend discipline to their supervisors or Manager Knight, but Knight will meet with the employee “to hear their side of the story” before making his decision about the recommendation. Thus, the operator/leads do not have the authority to discipline employees or effectively to recommend such action within the meaning of Section 2(11). ITT Lighting Fixtures, *op. cit.* President Skilliter was uncertain as to whether the Employer’s leadpersons have the authority to schedule overtime or merely to recommend it; in any case, it was not established that such recommendations are normally implemented without independent investigation by superiors. ITT Lighting Fixtures, *Ibid.*

As is the case with all of the Employer’s operators, crew coordinators, supervisors and leadpersons, the pressroom leadpersons are held responsible by the Employer for enforcing safety procedures and related training policies. In the P&D bulk operation, by comparison, it is the crew coordinators, not the operators, who conduct safety training; as the Employer does not allege any of the crew coordinators to be statutory supervisors, the inference arises that responsibility for safety training does not in itself support an allegation of statutory supervisory status in this unit.

Pressroom operator/leads do vacation-relief work for operators. They are seldom invited to Knight’s weekly meetings with his supervisors: e.g., only twice during the period from January through mid-September 2000 did operator/leads participate in such meetings. They are not involved in the interview process of applicants for employment. They wear the same uniforms as other operators and press crew members. Unlike their supervisors, they do not have offices or desks. They have authority to adjust time-card differences, but it was not established that such authority requires their use of independent judgment. Walter Barnes Electrical Co., 188 NLRB 183 (1971).

Operator/lead Zamora earns \$14.50 per hour; Knight guessed that the other operator/leads earn about \$17 and \$15 per hour, respectively. Press Operator Padgett, however, earns \$14.78 per hour; the rest of the pressroom operators earn from \$13 per hour “up.” Thus, at least one of the seven press operators earns a higher wage than does at least one of the three operator/leads.

I conclude that the record fails to support a distinction between the pressroom operator/leads and the pressroom operators. Accordingly, the pressroom operator/leads’ status with respect to Section 2(11) must be found to be the same as that of the pressroom operators, as analyzed in the immediately following section. Because I find, see below, that the Employer has not met the burden of showing that the press operators are statutory supervisors, I must also find, under the preceding reasoning, that the Employer has thereby failed to show that the press operator/leads are statutory supervisors.

The Pressroom Operators

The press supervisor lays out upcoming press runs for the operator in advance; the press runs are usually known by the Employer days in advance of production. Press Operator Pagett testified concerning his typical workday as follows. If the prior shift’s crew is still running the press when Pagett arrives to start his shift, he will confer with the press operator of the outgoing shift to be briefed on the press run; if the outgoing operator did not pull “office copies” (copies for direct delivery to the Employer’s respective client) then Pagett may stop the press to wash the blanket, in order to insure highest quality copies are obtained for the client. Then Pagett’s crew, without awaiting his instructions, will take their places at the press and the run will be completed.

If the press is not running at the start of his shift, the operator may direct a make-ready for the next press run. Based on “run sheets” provided by his superiors, Pagett thinks about how to accomplish the make-ready in the least amount of time, then physically participates with his crew in getting the press components clean and the proper colors mixed for the next product, assigning crew members particular tasks. During a

press run, a press operator operates the folder as well as overseeing the other crew members; he may also, e.g., temporarily operate the stacker machine if it develops a problem. The operator is responsible for the quality of his press's work product. When the press breaks down, the operator leads the effort to restore it, though in practice his crew usually does not give him the opportunity to demonstrate leadership by assigning their tasks since, knowing their jobs, they know and do what needs to be done. When a press run is modest enough so that it does not demand every crew member, Pagett, in the absence of a supervisor, may assign some of the employees to do basic maintenance. The fact, however, that a skilled employee gives instructions or makes daily assignments to other employees does not, standing alone, require a finding of supervisory status. Lakes Concrete Industries, Inc., 172 NLRB 896 (1968).

On the apparently rare occasions when issues of discipline arise in Pagett's crew, he reports them to his supervisor without making a recommendation. The supervisor then decides whether to write up the employee. If the supervisor is not present, Pagett will call the supervisor and have him speak directly with the problem employee.

The supervisor, in fact, remains on call when away from the facility; Operator Pagett calls the supervisor when, e.g., he needs a replacement for an absent crew member, has a disgruntled employee (see above), or faces a major mechanical problem requiring outside repair people. During the substantial time periods when press supervisors are not present, then, their on-call status suggests that the press operators cannot be considered fully responsible for the pressroom; but even if the operators were fully responsible, that would not in itself establish statutory supervisory status. Grey's Colonial Acres Boarding Home, 287 NLRB 877 (1987) (employee not supervisor despite higher wage and full responsibility for operation of facility when managers unavailable).

Pagett's crew is usually unchanged throughout the week, and has been together for over a year, thus minimizing the need for supervision and training. It does, however, include some apprentices. Padgett's main training activity consists of having the trainee assist him or some other knowledgeable crew member when they perform press

maintenance functions as needed. This is consistent with the traditional role of lead employees, rather than a demonstration of independent judgment.

Operators are not involved in the interviewing or hiring process. Operators do not check payroll time reports. Crew members who need time off for personal reasons usually approach the supervisor first and “might” tell the operator about it later. Crew members give vacation requests to the supervisor, not the operator. An operator’s authority to handle employee complaints or problems is limited: Pagett can relieve employees who do not feel well, and can switch employees among jobs for which they’re qualified, but any other problems require consulting the supervisor. The authority to excuse employees from work due to illness or medical appointment, however, does not by itself establish statutory supervisory status. Kent Products, White Cloud Div., 289 NLRB 824 (1988).

Unlike the press supervisors, the operators do not have offices and wear the same uniforms as their crew employees. Operators earn between approximately \$13 and \$14.78 per hour; journey presspersons, \$11 to \$13 per hour; presspersons, \$9 to \$11 per hour; reel tenders, \$7 to \$9 per hour; and stackers, \$6.50 to \$7 per hour.

There is no evidence that the Employer has held out the operators as supervisors to the pressroom employees, or that the employees see the operators as supervisors. Times Herald Printing Co., 252 NLRB 278 (1980).

In conclusion, the press operator’s status as the most experienced or skilled member of a group of employees, rather than as a supervisor vested with genuine management prerogatives (Times Herald Printing Co., *op. cit.*), is not only evident in the limitations of his authority, as detailed above, but also in the nature of the operator’s daily relations with his crew members. When, e.g., early completion of a press run makes it possible for some employees to be sent home early (a “bust out”), a rotation system, rather than the operator’s discretion, determines which employees will get their turn to go home.

In light of the facts and reasoning detailed above, then, I find that the Employer has not met its burden of showing that the press operators are statutory supervisors. North Shore Weeklies, Inc., 317 NLRB 1128 (1995).

The Platemaking Leadpersons

The platemaking and related “outputting” functions comprise a numerically small but crucial component of the pressroom operation, referred to collectively as “the plate room.” On the Employer’s organizational diagram these functions are headed by two positions, each labeled “platemaking leadperson,” which report directly to Pressroom Manager Knight. The outputting area creates negatives of newspaper pages which then enable the platemaking area to create printing press plates of those pages. The plate room is a large, enclosed area just a few feet from the printing presses in the pressroom.

The Outputting Area

The outputting area contains a half-dozen computer workstations and additional units of equipment called output devices. The workstations receive digitized information transmitted over high-capacity telephone lines from the Employer’s client newspapers, enabling the Employer’s output operators to review each finished newspaper page on their monitors for technical accuracy. The output operators then use electronic equipment called a “rip station” to transfer the page information to the output devices which produce the respective photographic negatives. Typically, then, the work of the output operators consists of manipulating information at computer terminals. The negatives are checked by the output operators and, if acceptable, moved to the platemaking area.

Leadperson Castillo stated that the proper name of the outputting area is “the electronic pre-press department,” and referred to the output operators as “electronic pre-press operators.” The outputting area is a relatively new and technical field within the Employer’s operations. The three outputting operators all had prior experience in the

field before Castillo hired them. Castillo himself had worked as output operator for seven months before the pressroom manager appointed him to replace a departing leadperson.

Castillo alone selected, interviewed, and successfully recommended for hire all three current output operators. He subsequently, on his own initiative, successfully recommended wage increases for two of those output operators. The pressroom manager followed the leadperson's recommendations without further investigation. The outputting area leadperson is the only individual who gives work direction and training to the output operators.

The leadperson makes training decisions without consulting his immediate superior: e.g., Castillo decided on his own to cross-train different output operators on the outputting equipment, a decision of which the pressroom manager learned only subsequently when he saw it in effect during a visit to the outputting area. The leadperson makes decisions about output operators' requests for time off. He makes the schedules for himself and the output operators; he adjusts payroll time discrepancies. At the request of the pressroom manager, the leadperson designed an employee performance evaluation form that was used in an employee evaluation process that was in progress at the time of the hearing; the leadperson evaluated the output operators on that form and submitted the evaluations to the pressroom manager.

The outputting area leadperson earns an hourly wage of \$15.45; his operators earn between \$11.00 and about \$11.50 per hour. He carries a pager when off duty, and regularly receives calls from the output operators about work issues. He shares an office with the other platemaking department leadperson; the output operators do not have offices. He does not attend supervisory meetings other than safety meetings. During three days a week, the leadperson performs the same work as the output operators; during his remaining two days a week, he performs maintenance and troubleshooting on the computer workstations, a task not done by the output operators.

Leadperson Castillo, then, is the only employee of the Employer who, with respect to the outputting area employees, effectively recommends hiring and reward decisions to the pressroom manager. Although work direction and technical judgment exercised as incidents to an employee's performance of professional, technical, or experience-dependent work are no longer interpreted as evidence of supervisorial independent judgment, that is true only insofar as the subject employee does not alter the terms and conditions of employment of other employees. Mississippi Power & Light Co., 328 NLRB No.146 (1999) Here, the outputting area leadperson has demonstrated the authority effectively to recommend the hiring and rewarding of output operators. He also exercises authority to grant time off. I therefore conclude that the outputting area leadperson is a statutory supervisor.

The Platemaking Area

In the platemaking area, the images on the photographic negatives produced in the outputting area are transferred onto extremely thin plates of aluminum or wood. Through photographic and chemical processes, the plates are turned into positives for eventual mounting on the printing presses. Before use, the plates must have "registration holes" punched into them, which is done daily by one or more of the platemakers with a punching machine, as about 10,000 plates may be used monthly.

Platemaking leadperson Ashou, who stated his position to be "plate making supervisor," has held that job for at least four years. Employer documents and other Employer witnesses consistently referred to that position as "platemaking leadperson." The status of supervisor under the Act, however, is determined by an individual's duties, not by title or job classification. John N. Hansen Co., 293 NLRB 63 (1989).

Ashou and the five other platemaking department employees, using the negatives provided by the output department, produce the plates from which the printing presses subsequently make copies. The platemaking department produces plates during all three shifts daily that the pressroom operates; Ashou works Monday through Friday from about

7 or 8 a.m. to 4 or 5 p.m., partially overlapping the shifts of the other platemakers. Ashou spends three or four hours on a typical workday making plates (such tasks as stripping, masking, opaquing, burning plates). When not on duty, Ashou gets paged by the Employer and/or platemakers between two and five times a week, with questions about what jobs are being run, problematic jobs, news that a machine is broken, and so on. All the platemakers, including their lead Ashou, are paid hourly wages.

Ashou had about four years' experience in the plate-making trade when he became leadperson. Of the remaining platemaking department employees, about half came in as very experienced platemakers (four-color strippers) while the rest were hired with no experience. A new employee would be introduced by Ashou to the machines, shown how to punch a plate, how to burn a plate, and how not to do those tasks. Ashou would team up the new employee with an experienced platemaker for the bulk of the training.

Ashou reports directly to Pressroom Manager Knight, as does Castillo. The pressroom manager spends between 15 and 60 minutes a day in Ashou's area of work, telling Ashou what platemaking work needs to be done but not communicating directly with the platemakers. Ashou schedules himself and other platemakers for overtime (at premium rates) when necessary to get plates done timely or to respond to last-minute editorial changes by the client newspapers; platemakers may then switch overtime assignments among themselves in response to their respective family commitments. Ashou testified that he does not exactly assign work to the platemakers, that they know what they have to do and pretty much know themselves what they will be doing every day.

Three of the platemakers employed in this department at the time of the hearing were hired after Ashou had become leadperson: all three were interviewed by Ashou who successfully recommended their hire to Pressroom Manager Knight. Knight may have interviewed one of the applicants, but only before, not after, asking Ashou for his recommendation. Knight has never rejected a hiring recommendation by this leadperson. Knight fired one platemaker guilty of absenteeism during his probation period after

Ashou insinuated that he did not want that platemaker. Ashou selects applicants for interview from among resumes left him by job seekers who have visited the facility and been referred to Ashou after speaking with Knight or the press supervisors.

Ashou reviews the platemakers' time cards; if, e.g., a platemaker was shortchanged because he forgot to "swipe" his magnetic time card, the platemaker fills out a form, Ashou signs off on it, and the platemaker recovers the missing wage. Occasionally Ashou "writes up" platemakers for disciplinary issues, usually at the pressroom manager's request. The record reflects one incident in which Ashou states he wrote up a platemaker on his own because the platemaker had failed to punch timely a number of plates specified by Ashou. Ashou's write-ups go into the employees' files; the record does not reveal the number or consequences of such write-ups. At one point, two otherwise good platemakers were "not getting along" to the extent that it impaired their work; Ashou spoke to the employees about the problem unsuccessfully, then got Knight involved; one of the employees voluntarily transferred to the pressroom.

Leadperson Ashou fills out evaluation forms of platemakers only in response to requests from Manager Knight, apparently at irregular intervals. He recommends an actual wage increase amount only when he is asked to do so; he has, in his recollection, recommended successfully a total of four wage increases for three individual platemakers.

As noted above, leadpersons Ashou and Castillo share an office in the plate room area. The only supervisory meetings that Ashou attends are safety meetings that were instituted shortly before the hearing. Ashou earns about \$15 per hour and believes that the remaining platemakers earn about \$9.25 to \$13 per hour.

Though the record concerning this leadperson's roles in work assignment and discipline is unclear, I find that there is evidence that the platemaking area leadperson has the authority effectively to recommend the hiring and rewarding of platemaking operators; I therefore conclude that the platemaking area leadperson is a statutory supervisor.

The Pressroom Coordinator

The Employer lists among its pressroom job titles that of “coordinator,” a title held at the time of the Hearing by only one person, Rod Herrod (Herrod). The Employer contended at the Hearing that Herrod must be excluded from the unit as a clerical employee, but the Petitioner declined to agree.

The Employer describes Herrod as a combination parts manager and clerical person. Herrod receives hourly wages and reports to Pressroom Manager Knight. He orders and receives press parts and supplies, plateroom parts, machine shop supplies, and office supplies, interacting with the Employer’s vendors. He monitors the use of newsprint and other materials by reviewing Employer business records. Herrod interacts with the pressroom supervisors and the plateroom leadpersons regarding the status of their parts and raw material orders and prospective requirements. The pressroom newsprint handler (stipulated by the parties to be in the unit) reports his receptions of newsprint deliveries to Herrod; they take newsprint inventory together. Herrod also monitors and records the proper disposal of recyclable materials, including unused merchandise coupons. Herrod does not engage in production work. Unlike the newsprint handler, he does not normally perform physical labor, but in the absence of the newsprint handler he does assist in loading recyclable product into containers. Herrod uses a back office near one of the presses in the 3424 facility.

Because Herrod’s duties are related to the production process rather than to general office operations, they place him clearly in the category of a plant clerical employee, and thus customarily included in a production and maintenance unit. Cook Composites & Polymers Co., 313 NLRB 1105 (1994); Raytec Co., 228 NLRB 646 (1977). The newsprint handler, with whom Herrod often collaborates, was stipulated into the unit by the parties. In addition, there is no evidence of the existence of other plant clerical employees who might provide a hypothetical future opportunity for Herrod to opt to be represented for collective bargaining. Therefore I find that the pressroom coordinator should be included in the unit.

The Packaging and Distribution (P&D) Operation

The P&D operation includes three departments: packaging or SLS, shipping, and receiving. The packaging department inserts advertising supplements into newspaper sections with its SLS machines, and also bundles such supplements in its bulk/handline operation for delivery in bulk to circulation agents in the field. The handline operation also inserts supplements by hand. Only one of the supplements is produced in the Employer's pressroom operation; the rest are trucked into the receiving department.

Though each of the P&D supervisors, and their respective leadpersons, have primary responsibility for one of the three P&D functions (usually referred to by witnesses as shipping, receiving, and SLS), they all appear to assume considerable responsibility for the functions which are not their "own." It is unclear in the record to what extent this is a consequence of the absence of a P&D manager, and to what extent it may be a consequence of the two or three shift per day schedule of the P&D operation which results in many shifts during which the supervisor and/or leadpersons responsible for two of the three above functions are partly or entirely absent.

The P&D Manager

This position has been vacant for about a year, and it is unclear whether it may be filled in the near future. Petitioner declined to agree to its exclusion from the unit. The P&D Manager is the highest-ranking Employer manager on the P&D side: his position is the equivalent, on the P&D side, of the Pressroom Manager position on the pressroom side. In the absence of a P&D Manager, the P&D supervisors report directly to President Skilliter. Under all the circumstances, including the findings below that certain employees who report to the P&D Manager are themselves statutory supervisors, I find that the exclusion from the unit of the P&D Manager is clearly warranted. Managers, like supervisors, are excluded from the Act's coverage. NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974).

The Packaging Supervisor

The incumbent, Lorenzo Ruiz (Ruiz), often referred to in the record as “SLS supervisor,” included among his duties overseeing the shipping and receiving areas as well as the production area of the 3550 facility. The expansion of his duties beyond the SLS or packaging department is at least partly due to the vacancy of the P&D Manager position, though the Packaging supervisor must in any case coordinate with the receiving and shipping departments to ensure that the packaging employees will timely receive the products scheduled for insertion, and that processed products will be timely shipped to the customers.

Ruiz typically begins his shift (Tuesday through Saturday from 7:00 a.m. to 3:30 p.m.) by conferring with the respective leadpersons in the SLS, shipping, and receiving departments as to the status and problems of their departments. Ruiz spends about 25% of his work time on the SLS department, about 25% on the bulk handline area, about 25% on the shipping department, and about 25% on the receiving department; his assumption of responsibility beyond the SLS department coincides with the substantial time periods during his shifts when the shipping supervisor and/or the receiving supervisor are not present. He deals exclusively with the leadpersons, giving no work direction directly to other employees. Ruiz also spends time in meetings with Human Resources personnel and the Employer’s office manager (whose exclusion from the unit was stipulated by the parties). He also meets weekly with the Packaging leadpersons to determine, based on his advance knowledge of production orders, the SLS work schedule, including overtime prospects, for each forthcoming week. There may be 300 to 500 production orders; the production schedule is determined based on the applicable deadlines and the availability of employees and machine time.

When there are openings for SLS operators, crew coordinators, or for leadpersons in shipping or receiving, Ruiz and a Human Resources person jointly conduct the applicant interviews. Ruiz then recommends his choice to Human Resources, which has never overruled his choice. Skilliter testified that he accepts Ruiz’s recommendations as

to employee promotions, and that Ruiz has the “ultimate, final say” regarding employees who apply to transfer into the packaging department from other departments. Ruiz also testified that he has authority to fire employees, but there is no evidence regarding the frequency or substance of such decisions. The record is unclear as to whether Ruiz independently investigates disciplinary recommendations made by leadpersons, but he testified that his approval is required before such recommendations can be forwarded to Human Resources for final clearance.

Packaging department employees’ vacation and time-off requests must be approved by Ruiz, which Ruiz does following his leadpersons’ recommendations. Ruiz, however, reviews all P&D employee attendance records every Saturday, and alerts the leadpersons to employee attendance problems that require disciplinary warnings. Also on Saturdays, when the SLS machines usually do not run, Ruiz does what President Skilliter calls his “strategic work:” budgeting, manpower assessment, and so on. Manpower assessment refers to projections of temporary employee needs to increase the production of the SLS machines; such employees are then hired as needed by a staff member excluded from the unit by stipulation of the parties.

Ruiz is paid a salary, and has an office located in the shipping area of the P&D department. He spends little, if any, time doing production work.

Based on the above facts, evidence shows that the Packaging supervisor possesses authority effectively to recommend hiring and promotion decisions for the SLS and other departments based on his independent judgment. It is unclear, however, whether or to what extent this packaging supervisor’s scope of authority over the other P&D departments is a temporary creature of the absence of a P&D manager. Accordingly, I find expressly that the Packaging supervisor is a statutory supervisor on the basis of his authority effectively to recommend hiring, promotion, and transfer decisions for the SLS department and of his responsible direction of the SLS employees exercised through the Packaging leadpersons and operators and his planning of the SLS work schedules.

The Packaging Leadpersons

The two packaging leadpersons supervise both the SLS machine operations and the bulk (or bulk/handline) operations of the packaging department. Both operations must complete insertion of varying numbers of advertising inserts into large but varying volumes of newspaper sections so that the product may be shipped by daily deadlines. The packaging leadpersons, sometimes referred to in the record as SLS leadpersons, do not give work direction to the employees but only to the SLS operators and bulk crew coordinators who, in turn, implement such work direction by giving appropriate direction to the employees.

Packaging leadperson Aram testified that during the second shift, when Shipping Supervisor Palacio is the only supervisor present, Aram makes decisions about overtime for the SLS crews and Palacio ratifies Aram's decisions. On that shift, the SLS crews and the bulk crews total about 85 to 90 employees. Because the packaging department supervisor is not present during Aram's shift and there is no P&D manager, Aram often discusses work issues with President Skilliter directly. Aram testified that he and Skilliter regularly discuss whether overtime production by the SLS machines will be needed, and that Skilliter usually leaves to Aram the decision of whether to accomplish overtime production by extending the second shift or calling in a third shift. Packaging department supervisor Ruiz, however, testified that he and his leadpersons (Aram and Bartolome) meet weekly to determine overtime prospects based on Ruiz's advance knowledge of incoming orders. While the evidence, then, is unclear as to who makes the final decision regarding whether overtime will be authorized, it is clear that leadperson Aram decides what schedules and which employees will implement the Employer's decision to invest in overtime hours. If Aram decides to extend the second shift but that not all the second-shift SLS employees are required, Aram independently selects which employees will stay and earn premium pay; if Aram decides that a third shift is needed, as happens with increasing frequency in the course of the fall season, Aram may decide to work a 12-hour shift to supervise the first half of the third shift, and the other

packaging department leadperson may also work a 12-hour shift to supervise its second half.

In approximately two and a half years as a packaging department leadperson, Aram has successfully recommended a large (but unspecified) number of packaging employees for promotion to higher-paying jobs: his recommendations were approved by the president without independent investigation of the employees' merits by Aram's superiors. For example, based upon Aram's recommendation, one SLS feeder was promoted to palletizer operator, another SLS employee to material handler, and a third from temporary agency-provided employee to regular employee. Similarly, based upon the recommendation of the other packaging department leadperson, Bartolome, an SLS feeder was promoted to material handler, then to palletizer operator.

The packaging department leadpersons also have authority to grant, deny, or modify time-off requests by packaging department employees. Requests for time-off for periods of less than one month are decided by the leadpersons, based on their records of scheduled vacations and their experience regarding the number of needed personnel, without reference to their superiors. Aram has often exercised such authority.

Leadperson Aram is responsible for the job training, including safety training, of every new employee who enters the SLS or bulk operation. Aram trains new SLS machine operators, including mechanical training, electrical training, safety training, how to train the employees under them, how to talk to the employees under them, and how to run SLS production safely in large amounts. Aram maintains his own employee attendance records for the SLS machines, and weekly corrects the payroll department's corresponding records thus affecting employee pay.

The record is unclear concerning the exercise of disciplinary authority by Aram.

Both packaging leadpersons, when they begin their respective shifts, check on the status of the other two departments in P&D. Aram fills in for the shipping department supervisor when he is on vacation, and partly fills in for vacationing receiving

department leadpersons during Aram's shifts. The packaging leadpersons receive a salary, and do not operate the SLS machines except in cases of emergency need.

Based on the above facts, evidence shows that leadperson Aram exercises with independent judgment the authority to select unit employees for required overtime work; to responsibly direct employees of the SLS operation; to effectively recommend promotion of SLS employees; and to grant or deny time-off requests by packaging department employees. I find therefore that leadperson Aram is a statutory supervisor.

There is uncontradicted record evidence that the packaging department leadperson who did not appear possesses the same level of authority and responsibility as the one who gave testimony. Uncontradicted evidence that a non-appearing employee has similar authority to that of a witness employee may suffice to support a finding that the non-appearing employee in fact has similar authority to that of the witness. Azusa Ranch Market, 321 NLRB 811 (1996). Accordingly, I find that packaging department leadperson Bartolome possesses similar authority to that of Aram. Based on my findings, above, that leadperson Aram is a statutory supervisor, I further find that both packaging department leadpersons are statutory supervisors.

The SLS Operators

The crew led by an SLS operator includes feeders, a material handler, a palletizer operator, and often a relief operator; two quality assurance employees help inspect the output of the SLS machines. The material handler transports pallets of inserts from a storage area to the appropriate position near the feeders. The number of feeders needed by an SLS machine is determined on each run by the number of different pieces being fed into the machine for insertion. The work stations on the SLS machines (sometimes referred to as "SLS lines" in the record) are called heads; the number of heads in use, and therefore feeders, varies according to the product being inserted. The machine has 28 heads available for inserts, but the number in use normally varies between 8 and 12, each one normally requiring a "feeder" employee. The palletizer is a machine at the "back

end” of the SLS machine that bundles, stacks, and shrinkwraps the product on pallets for eventual handling by the shipping department. The SLS machines usually run for two shifts on Monday through Thursday, and one shift each on Friday and Sunday.

The SLS operators implement running schedules provided for each machine by the SLS leadpersons (also referred to in the record as packaging leadpersons). The SLS operator is responsible for getting the machine started, arranging the feeders, starting production, and maximizing quality and volume of production. It appears that the packaging leadpersons ordinarily do not give work direction to the SLS employees but only to the SLS operators. The SLS operators, in turn, implement those work directions by giving appropriate orders to the SLS machine crew employees. Each of the three SLS machines has an assigned crew, but due to workload fluctuations, employee absences or lateness there is often a need for the three SLS operators to meet with a packaging leadperson to arrange temporary transfers of feeders among the SLS machines, guided by the relative difficulty of the jobs being run on each machine. The SLS operators themselves sometimes work as feeders if needed. The feeders on each SLS machine, on their own, rotate among the different heads, to share fairly jobs of varying difficulty; the SLS operator may determine the length of rotation. When insertion errors occur, the SLS operator assigns crew employees to “deinsert” the appropriate inserts by hand and make them available for reinsertion. The SLS operators coordinate delivery of the material they need with a material handler; they notify their leadpersons or the maintenance employees when their machines need maintenance. The SLS operators spend about three-quarters of their time doing actual work on their machines, making myriad

adjustments to the controls, as opposed to observing production or observing their employees. The fact, however, that a skilled employee gives instructions or makes daily assignments to other employees does not, standing alone, require a finding of supervisory status. Lakes Concrete Industries, Inc., 172 NLRB 896 (1968).

The SLS operators do not make overtime decisions: their leadpersons assign overtime and decide which crew employees may be excused from overtime due to hardship. The SLS operators do not issue discipline independently, but merely report disciplinary issues to their leadpersons, generally without recommendation. Nor do they verify or adjust employee payroll time reports.

When an SLS employee needs personal time off, he requests it of a packaging department leadperson, not of his SLS operator. When a packaging department leadperson is on vacation, the job is temporarily filled, not by an SLS operator, but rather by the packaging department supervisor or by the shipping department supervisor. SLS operators impart safety training to new crew employees: they show the employees the pinch points on the SLS machines and how to stop the machines. In the bulk operation, it is the crew coordinators, not the SLS operators, who conduct safety training; as the Employer does not allege any of the crew coordinators to be statutory supervisors, the inference arises that responsibility for safety training does not in itself support an allegation of statutory supervisorial status at this Employer.

Unlike the SLS leadpersons, SLS operators are paid hourly wages and do not have the use of an office. SLS operators do not attend supervisors' meetings, though they do attend quarterly meetings for SLS operators conducted by P&D supervisors. There is no evidence that the Employer has held out the SLS operators as supervisors to the SLS employees, or that the employees see the operators as supervisors. Times Herald Printing Co., 252 NLRB 278 (1980).

Based on the above facts and the record as a whole, the evidence does not establish that SLS operators possess or exercise authority to hire, transfer, suspend, lay

off, recall, promote, discharge, reward, or discipline other employees, or adjust their grievances, or effectively to recommend such actions. To the extent that SLS operators appear to assign work to crew employees or to direct their work, this reflects the SLS operators' status as the most experienced or skilled, and perhaps most respected, members of their respective crews, rather than as supervisors vested with genuine management prerogatives. Times Herald Printing Co., op. cit. An expert or experienced employee is often required, as part of the employee's own job, to make detailed and complex decisions: the judgment required in making those decisions does not, however, transform that employee into a supervisor. Mississippi Power & Light Co., 328 NLRB No.146 (1999). Based on the foregoing facts and reasoning, I find that the SLS operators are not statutory supervisors.

The Shipping Supervisor

Supervisor Palacio, like Ruiz, described himself as a P&D supervisor, though other witnesses usually referred to him as the shipping (or transportation) supervisor.

Supervisor Palacio spends about two-thirds of his shift in the shipping department; he approves the plans and schedules for truck runs recommended by his leadpersons. Palacio is in charge of the four shipping department leadpersons, but, since he is usually the only P&D supervisor present during the second shift, is also responsible for the daily operation of the entire P&D side on that shift, including about 100 employees. With respect to that larger responsibility, he works with four leadpersons who are usually present during his shift: two from the shipping department, one from the receiving department, and one from SLS. Palacio daily observes each P&D department (shipping, receiving, and packaging or SLS), alerting the respective leadpersons when the number of employees appears to him inadequate for the jobs at hand, and consequently directing the leadpersons to call in more employees and/or to change the assignments of certain employees. Palacio reviews all of the second-shift P&D leadpersons' recommendations for employee overtime, and sometimes rejects them when he judges it possible to meet

production goals in straight time. With respect to the design and planning of the truck runs and schedules, the record is unclear as to whether it is done primarily by Palacio or rather by his shipping department leadpersons; it is clear, however, that Supervisor Palacio has final approval over such design and scheduling. When shipping department equipment, e.g. forklifts, is serviced by outside vendors, Palacio is the person who approves the bills.

Palacio testified that P&D leadpersons are interviewed and selected jointly by the three P&D supervisors (Palacio, Ruiz, and Hawkins). Their recommendations were forwarded to the P&D manager when there was one, and today go directly to President Skilliter. Palacio participated in a number of successful recommendations for leadpersons under that process; the number, timing and details of those recommendations are not disclosed by the record. Palacio also participated, jointly with leadpersons, in disciplinary investigations and subsequent successful recommendations of employee discipline, including discharge, to the Human Resources department.

Palacio reports directly to President Skilliter and attends weekly supervisors' meetings at which President Skilliter is present; the subjects discussed include production volume, costs, and waste. Palacio serves as a resource to the second-shift leadpersons regarding training, safety practices, accident reports, and the adjustment of employee grievances. He has final approval over the leadpersons' recommendations regarding employee requests for vacations and other time off. On some days, Palacio spends half his time in his office, on tasks such as reviewing the drivers' run times and schedules, preparing budgets for the controller, or calculating whether P&D has the capacity to take on additional delivery work.

Palacio receives a salary, has an office in the shipping department, and spends no time engaged in manual labor related to the equipment and trucks under his supervision.

Based on the above facts, I find that during the second shift P&D Supervisor Palacio, commonly known to employees of the Employer as the [shipping supervisor](#), exercises with independent judgment the authority responsibly to direct the P&D employees and to implement employee overtime. It is unclear, however, whether or to what extent this shipping supervisor's scope of authority over the other P&D departments is a temporary creature of the absence of a P&D manager. Accordingly, I find expressly that the shipping supervisor is a statutory supervisor on the basis of his authority responsibly to direct the shipping department employees, including the implementation of shipping department employee overtime.

The Shipping Leadpersons

The shipping leadpersons dispatch vehicles and drivers. The shipping department includes various categories of drivers and also “loaders,” who take product from the packaging department (either the SLS machines or the bulk/handline) and deposit it either in shipping department locations or directly into the trucks. Because the shipping department must meet daily shipping deadlines, it normally functions around the clock and has more leadpersons, four, than any other of the Employer’s departments. The drivers are occasionally referred to in the record collectively as the “transportation department,” but they are clearly part of the shipping department and overseen by the shipping leadpersons. The leadpersons assign truck runs to particular drivers, and assist the shipping supervisor in designing and planning the truck runs and schedules. They manage the loading of trucks with the goal of minimizing the number of delivery stops and therefore the probability of driver overtime.

In order to oversee the shipping department employees’ three daily shifts, the shipping leadpersons work staggered shifts, often with no supervisor present. Leadperson Frank Ramirez (Frank), for example, works three second shifts and two first shifts per week, Thursday through Monday: on four of his shifts, no supervisor is present. Typically, Frank begins his shift by checking the status of the packaging department operations, both SLS and bulk: sometimes he will ask them to change their planned order of production in order to facilitate his resulting shipping operations. Then he returns to the shipping department, to instruct the loaders which trucks to load and exactly how to load them, to assign drivers to the trucks and explain the load and route to each driver. Frank maintains a record of outgoing loads; he daily assigns work to 3 loaders and about 12 to 15 drivers each of whom make between 1 and 3 runs daily, totaling an average of perhaps 20 loads per shift. Frank never drives a truck, but occasionally uses a forklift when, in his sole judgment, the loaders need help. No other individual gives direct supervision to loaders or drivers during the shifts when Frank is doing so. Frank also assigns overtime to shipping department employees, including drivers, whenever, near

the end of his shift, it appears to him necessary. Frank does not discuss his overtime decision with a supervisor unless it appears to him to be a large amount of overtime, in which case, subsequent to his decision and its implementation, Frank informs a supervisor of the reasons for the decision. (The record does not quantify the referenced amounts of overtime.) Frank also exercises authority, without consulting a supervisor, to rule on employees' requests for non-vacation time off, according to his view of the shipping department's labor needs for the time periods in question. Occasionally Frank finds his department short-handed: if the shortage is larger than could be remedied by Frank's own labor, Frank tries to borrow labor from the packaging department leadpersons; if they cannot spare anyone, Frank exercises his authority, without prior consultation with a supervisor, to call in a shipping department employee from another shift.

Frank spends about two hours daily in the shipping supervisor's office doing paperwork: prospective production lists, outgoing load and driver lists, overtime reports, absence reports, time-off requests, and instructions for the driver (daily chosen by Frank) who must make pick-ups.

Frank issues disciplinary warnings to loaders and drivers as he judges necessary, and informs a supervisor only after the fact. For example, Frank has given an oral warning (memorialized in the employee's personnel file) to a driver who disobeyed his order to move a trailer before going to lunch. In about two years as a leadperson, Frank has issued three warnings to employees.

Though hiring of part-time employees is usually executed by the president's staff assistant (a position excluded from the unit by stipulation of the parties) upon request by supervisors and leadpersons, P&D leadpersons, have the authority, in that staff assistant's absence, to call in part-time employees as they deem necessary, and they have exercised that authority.

The leadpersons decide when to send trucks to the maintenance facility. The leadpersons prepare reports on issues including waste and overtime, and submit them directly to President Skilliter. As determined by the schedule of trucks to be loaded, the shipping leadpersons decide (within legal limits) when the respective shipping employees take their lunch breaks.

All four shipping leadpersons receive a salary; all other shipping department employees (except for the shipping supervisor) receive hourly wages. The leadpersons share the shipping supervisor's office in order to do their paperwork.

Based on the above facts, evidence shows that, with respect to the shipping department employees on his shift, shipping leadperson Frank Ramirez responsibly directs their work and has the authority effectively to recommend discipline and grant time off using his independent judgment. Therefore I find that shipping leadperson Frank Ramirez is a statutory supervisor. Only Frank Ramirez, of the four shipping leadpersons, testified, but there is uncontradicted evidence that all four shipping leadpersons do essentially the same job and have the same level of authority. Uncontradicted evidence that a non-appearing employee has similar authority to that of a witness employee may suffice to support a finding that the non-appearing employee in fact has similar authority to that of the witness. Azusa Ranch Market, 321 NLRB 811 (1996). Accordingly, I find that all four shipping department leadpersons possess similar authority to that of leadperson Frank Ramirez. Based on my findings, above, that leadperson Frank Ramirez is a statutory supervisor, I further find that all four shipping department leadpersons are statutory supervisors.

The Receiving Supervisor

The receiving department handles the acceptance and unloading of the advertising inserts or newspaper supplements intended for insertion by the P&D operation. Like the shipping and Packaging supervisors, in the absence of a P&D manager the receiving

supervisor reports directly to the president, who does not directly supervise any P&D department.

Receiving supervisor Hawkins did not appear at the hearing; other Employer witnesses gave uncontradicted testimony about his responsibilities. Hawkins works a shift from 10 p.m. to 6:30 a.m., Monday through Friday; the Employer requires him on that shift because Hawkins has a background in transportation and is therefore able, in addition to supervising the receiving department, to supervise certain urgent delivery assignments (“hot product”) which the shipping department must execute during the graveyard shift. Hawkins may spend the majority of his time interacting with the shipping department truck drivers and leadpersons, but observes all aspects of the P&D operation and even makes sure that the presses are running. With respect to the receiving department, Supervisor Hawkins directs it mostly through telephone calls and notes to his two receiving department leadpersons, whose schedules rarely overlap with that of Hawkins. Hawkins does overstay his shift, however, when particular problems in receiving require his presence.

Hawkins has the authority of final approval over employee applications to transfer into the receiving department from other departments, though the receiving department leads submit recommendations to Hawkins and it is unclear whether he has ever failed to accept their recommendations. Because such applications typically are submitted by SLS machine feeders, the transfer applications are in fact applications for promotion by employees of the Employer.

Like the Packaging supervisor (Ruiz) and the shipping supervisor (Palacio), Hawkins receives a salary and attends supervisory meetings with President Skilliter. In the receiving department, Hawkins and his two leadpersons are the only employees on salary. Hawkins spends no time engaged in manual labor such as is performed by other employees of the receiving department.

Based on the above facts, I find that during his shift P&D Supervisor Hawkins, commonly known to employees of the Employer as the receiving supervisor, exercises

with independent judgment the authority responsibly to direct the P&D employees. It is unclear, however, whether or to what extent this receiving supervisor's scope of authority over the other P&D departments is a temporary creature of the absence of a P&D manager. Accordingly, I find expressly that the receiving supervisor is a statutory supervisor on the basis of his authority responsibly to direct the receiving department employees.

More generally, supervisors Ruiz and Palacio, and President Skilliter, testified that all three P&D supervisors have the same level of authority and responsibilities. Uncontradicted evidence that a non-appearing employee has similar authority to that of a witness employee may suffice to support a finding that the non-appearing employee in fact has similar authority to that of the witness. Azusa Ranch Market, 321 NLRB 811 (1996) Accordingly, I find that Receiving Supervisor Hawkins possesses similar authority to that of supervisors Ruiz and Palacio. Based on my findings, above, that Ruiz and Palacio are statutory supervisors, I consequently find that the receiving supervisor is a statutory supervisor.

The Receiving Leadpersons

Receiving department clerks ("receiving clerks") meet incoming trucks at the 3550 facility, make sure they dock in the appropriate locations, and process paperwork provided by the drivers. Receiving department employees ("receivers") then unload advertising inserts and similar product from the truck trailers, using forklifts and other equipment, and place ("stage") the product so as to facilitate efficient supply of the packaging department. The two receiving leadpersons and the receiving supervisor work staggered shifts; in addition to them, there are about six receiving department employees.

Practically all work direction to receiving department employees is imparted by the receiving leadpersons: the receiving supervisor works a graveyard shift and does not normally see his leadpersons or employees in person; the other P&D supervisors, when they have oversight of the receiving department in its supervisor's absence, give

guidance, if any, exclusively to the receiving leadpersons, and do not give work direction to the receiving employees below the leadpersons. The receiving leadpersons assign overtime work as needed in their judgment. They make sure that the proper employee complement is present, that their equipment is functioning properly or is timely repaired, that insert shipments arrive in good condition or are rejected, and that accepted shipments are staged appropriately.

With respect to employee training, receiving leadperson Ochoa is licensed to train and certify forklift operators, including the administration of written and performance tests, and does so for P&D employees.

Leadperson Seymour recommended to President Skilliter two receiving department employees for layoff during a 1999 downsizing of the department, recommended after his own investigation that another employee be disciplined for falsifying payroll time, and recommended the discharge of a third employee for “disappearing” after lunch one day: all of Seymour’s recommendations resulted in the actions Seymour recommended, without independent investigation by President Skilliter. Seymour prepares and signs disciplinary warnings to employees. The leadpersons daily correct employee payroll time records based on their own records and observations. Though hiring of part-time employees is usually done by the president’s staff assistant (a position excluded from the unit by stipulation of the parties) upon request by supervisors and leadpersons, P&D leadpersons, including the receiving leadpersons, have the authority, in that staff assistant’s absence, to call in part-time employees to work as they deem necessary, and they have exercised that authority.

As determined by the volume of vehicles to be unloaded, the receiving leadpersons decide (within legal limits) when the receiving employees may take their lunch breaks. They also make recommendations regarding employee vacation or time off requests that are generally adopted without further investigation by the supervisors.

These leadpersons are, with the exception of the receiving supervisor, the only receiving department employees who receive a salary. Unlike the receivers, the receiving

leadpersons spend a minimal amount of time helping to unload trucks; unlike the receiving clerks, the leadpersons normally spend perhaps 30% of their time filling out paperwork. They do spend substantial time interacting with the office manager (a non-unit position by stipulation of the parties) when inserts are delivered without a specified insertion date, or when certain inserts are misdelivered or need to be returned as unacceptable in quality.

Based on the above facts, evidence shows that, with respect to the receiving department employees on his shift, receiving leadperson Seymour responsibly directs their work and has the authority effectively to recommend layoffs, discipline and discharge through the use of his independent judgment. Only Seymour, of the two receiving leadpersons, testified, but there is uncontradicted evidence that both exercise the same level of authority. Uncontradicted evidence that a non-appearing employee has similar authority to that of a witness employee may suffice to support a finding that the non-appearing employee in fact has similar authority to that of the witness. Azusa Ranch Market, 321 NLRB 811 (1996). Accordingly, I find that receiving leadperson Ochoa possesses similar authority to that of receiving leadperson Seymour, and that both receiving department leadpersons are statutory supervisors.

There are approximately 292 employees in the unit.

5/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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